

July 1, 2005

City of Scottsdale
Board of Adjustment
C/O Planning and Development Services Department
7447 E. Indian School Road
Suite 105
Scottsdale, AZ 85281

**Re: Narrative for Glen and Aymie Berkley Variance Request
9478 E. Cortez St, Scottsdale, AZ 85260**

Dear Chairman and Board Members.

Owners Glenn and Aymie Berkley purchased their Scottsdale home on August 21, 1996. A few years after moving in, in the fall of 1999, the Berkley's hired a contractor to construct a small addition to enlarge an office in the northwest corner of the residential structure and add a play room on the north (rear) elevation.

Unbeknownst to the Berkley's, their contractor applied for a building permit but completed the addition without calling for many of the required inspections. *See*, Exhibit A. Only the new foundation for the addition and the gas line were inspected and approved by the City. However, shortly after learning that many required inspections had not been completed, the Berkley's hired a licensed structural engineer to inspect the addition and perform a structural analysis. The addition was eventually determined to meet building code standards. *See*, Exhibit B.

The Berkley's then sought to obtain an approved building permit for the addition but discovered, again unbeknownst to the Berkleys at the time, that the contractor had constructed the addition in such a manner as to cause a small portion of northwest corner of the office portion of the addition and the northern-most corner of the play room portion of the addition to encroach slightly into the thirty-five (35) foot rear set-back as required per City Code. *See*, Site Plan. The furthest encroachment is by the northern-most corner of the play room addition and consists of 2.7 feet or approximately 33 inches. *See*, Survey, Exhibit C. Because of these encroachments, the Berkleys are unable to obtain building permit approval for the addition.

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Before requesting this variance, the Berkley first attempted to secure a boundary line adjustment with their neighbor to the north. The Berkelys' incurred significant expenses in obtaining the surveys and legal services necessary to prepare the paperwork for a lot line adjustment. Unfortunately, their neighbor ultimately rejected the proposal. The Berkleys' now have no other recourse but to seek a variance to the setback requirements.

The Berkleys contend that they meet the criteria for a variance under the provisions of § 1.804 of the Scottsdale Basic Zoning Ordinance as follows:

Criteria (A)(1) Special Circumstances Applicable o the Property.

The "special circumstances" applicable to the Berkley parcel include both the size and shape of the parcel. Though zoned R1-35, the Berkely parcel is only 22,032 square feet in size and does not meet the 35,000 square foot minimum lot size for the applicable zone. The Berkley parcel is thereby only 62% of the size of similarly zoned parcels. Because of its substantially smaller size, the Berkley parcel does not enjoy the same "building envelope" or "buildable area" enjoyed by other R1-35 zoned parcel which meet the minimum lot size. In addition, the Berkley parcel is irregularly shaped, having a narrower "stem" from its cul- de-sac access point that widens out towards the "rear" of the lot. The "rear yard" of the Berkley lot is rather difficult to determine, and arguably could be either the western or the northern property line. For reasons unknown to the Berkleys, the City has apparently applied the 35 foot "rear yard" setback of the R1-35 zone to both the western and northern property lines. The "side yard" setback in the R1-35 zone is 15 feet. Thus, because of the irregularly shaped lot, the Berkley parcel does not enjoy the same "building envelope" or "buildable area" enjoyed by other R1-35 zoned parcels which are more conventionally shaped.

Criteria (A)(2) A Variance is Necessary and Does Not Grant Special Privilege.

The requested variance is necessary to preserve the privileges and rights of the Berkleys to enjoy a residence of similar size and amenity with those built upon other parcels zoned R1-35 and not irregularly shaped. The encroachments into the rear setbacks are minimal, and consist only of structural corners, as opposed to entire walls. The Berkleys have sought, at substantial expense, other means to remedy the setback encroachments and have exhausted these means before applying for a variance. The approval of the requested variance will not constitute a grant of "special privilege" for the Berkleys because the "building envelope" on their lot is already substantially smaller than that upon other R1-35 zoned parcels which are not irregularly shaped. The requested minor setback encroachments which would allow the Berkleys a minimal increase the buildable area upon their parcel will not result in any special privilege because the increase does not exceed the buildable area on a "standard" sized and shaped R1-35 parcel.

Criteria (A)(3) The Special Circumstances Were Not Self Imposed.

The special circumstances relating to the Berkley parcel's size and shape were not created or self-imposed by the Berkleys, but rather by the person or persons who surveyed and subdivided the subdivision known as Alamosa Estates, and the City of Scottsdale, which approved the subdivision and the layout of the lots.

Criteria (A)(4) The Variance Will Not Be Detrimental

The requested variance is minimal in nature and involves the minor encroachment of two building corners into a relatively large rear yard setback. The encroachments are not visible from the public way, and viewable only by immediately adjacent neighbors who are not expected to raise any concerns. There is no impact upon the public welfare in general. Moreover, consider that current City regulations would allow the Berkleys to construct a separate accessory building (such as an office, workshop or guest house) which encroaches upon up to 30% of the entire rear yard, with only a 2 foot setback from the rear property line. *See*, Scottsdale Basic Zoning Ordinance §7-200(A)(4). It is only because the Berkleys have constructed a connected small addition to the primary residential structure that the encroachment is prohibited by the zoning code.

In conclusion, based upon the information and contentions referenced above, the Berkley variance meets each of the applicable criteria for approval of the requested variance. The Berkleys thereby respectfully request that the Board of Adjustment vote to APPROVE this variance.